

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
APR 14 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

COURTNEY W.,)	
)	
	)	Appellant,
)	
v.)	
)	
ARIZONA DEPARTMENT OF ECONOMIC	)	2 CA-JV 2010-0133
SECURITY and JOEY W.,)	
)	
	)	Appellees.
_____)	
JESSE D.,	)	2 CA-JV 2010-0135
	)	(Consolidated)
	)	DEPARTMENT B
)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY and JOEY W.,)	
)	
	)	Appellees.
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19296900

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorney for Appellant Courtney W.

Joan Spurney Caplan

Tucson
Attorney for Appellant Jesse D.

Thomas C. Horne, Arizona Attorney General
By Eric Devany

Mesa
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 In this consolidated appeal, appellants Courtney W. and Jesse D. challenge the juvenile court’s November 2010 order terminating their parental rights to Joey, born in October 2008, on the grounds they had failed to remedy the circumstances that had caused him to remain in court-ordered, out-of-home care for more than six and nine months. *See* A.R.S. § 8-533(B)(8)(a) and (b). The parents contend the evidence was insufficient to establish the statutory grounds for severance.

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and “shall also consider the best interests of the child.” § 8-533(B). The statutory grounds for termination must be proven by clear and convincing evidence. A.R.S. § 8-537(B). We will affirm an order terminating parental rights unless we can say as a matter of law no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). And, “we view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C.*

v. Ariz. Dep't of Econ. Sec., 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted).

¶3 In December 2009, the Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) took temporary custody of then one-year-old Joey after Jesse, who had not established paternity of the child, was unable to authorize his medical treatment at a Tucson hospital. Courtney had gone out-of-state to help some family members and had left Joey, who was sick, in Jesse's care, with a letter purporting to authorize him to get medical care for the child. Joey contracted a serious ear infection and when Jesse ultimately brought him to the hospital, he was legally unable to authorize treatment.

¶4 Joey was adjudicated dependent in January 2010 after Courtney and Jesse each admitted the allegations of an amended dependency petition, including allegations that both parents used marijuana and that they had neglected Joey by, inter alia, engaging in domestic violence in his presence, failing to obtain treatment and medication for mental health issues, and failing to establish paternity or otherwise to arrange authority for medical treatment in Courtney's absence. After the juvenile court found that "severance and adoption" was the most appropriate case plan, the state filed a motion to terminate Courtney's and Jesse's parental rights.

¶5 The state initially sought to terminate Courtney and Jesse's parental rights pursuant to § 8-533(B)(8)(b) on the grounds that Joey was "under three years of age [and] has been in an out-of-home placement for a cumulative total period of six months or longer." It subsequently amended the motion to include the grounds set forth in § 8-533(B)(8)(a), after Joey had been in an out-of-home placement for more than nine months.

¶6 In an under-advisement ruling issued after a contested termination hearing, the juvenile court terminated both parents' parental rights. The court found that Jesse had been offered a panoply of remedial services designed to reunify the family, including the following, which the court specified in its order: urinalysis, an intake at COPE to determine his mental health needs, parent aide services, supervised visitation, child and family team meetings, domestic violence counseling, and requirements that he document a legal source of income, maintain contact with CPS, obtain safe and appropriate housing, and notify his case manager of address changes. The court noted that, although Jesse had engaged in visitation with Joey and had completed his parenting classes, he had failed to comply with required urinalysis, had not completed his COPE intake, had not participated in services addressing the domestic violence issues, had not kept his case manager informed of where he was living, and had been arrested for felony possession of marijuana for sale in February 2010. The court therefore concluded Jesse had substantially neglected and wilfully refused to remedy the circumstances that had caused Joey to remain in court-ordered, out-of-home care.

¶7 The court also summarized the case plan for Courtney, which included mental health treatment at COPE, substance abuse treatment, urinalysis, parenting aide, supervised visitation, child and family team meetings, and requirements that she establish a legal source of income, get safe and stable housing, and resolve her outstanding criminal charges. The court found that Courtney had not addressed her substance abuse issues, had not obtained domestic violence counseling, had not complied with urinalysis, and had not been consistent in visitation with Joey. As it had with Jesse, the court concluded Courtney had substantially neglected and wilfully refused to remedy the circumstances leading to Joey's out-of-home placement. The court also concluded that

severance was in Joey's best interests, based on his foster parents' handling of his special medical needs and the permanency they were willing to provide.

¶8 In order to terminate parental rights based on any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a diligent effort to provide the family with appropriate reunification services. *See* § 8-533(B)(8). ADES fulfills this duty by providing the parent “with the time and opportunity to participate in programs designed to help [him or] her become an effective parent.” *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide the parent with every conceivable service or to ensure that she participates in every service offered. *Id.*

¶9 Jesse maintains there was insufficient evidence to support the juvenile court's findings and conclusions and it therefore erred in severing his parental rights. He argues the evidence at the termination hearing showed that although he “had not started a couple of his case plan tasks, he had completed a number of other tasks . . . and in fact had an appointment . . . set up . . . for that day to set up the rest of his reunification services.” But Jesse understates or ignores the portions of his case plan with which he had not complied.

¶10 The evidence, viewed in the light most favorable to sustaining the juvenile court's ruling, *see Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303, established Jesse had failed to demonstrate that he had obtained safe, stable and appropriate housing as required by his case plan. In fact, he and Courtney had not allowed the case manager to visit one of their residences. Although he testified about employment at the hearing, he

had not provided the case manager with documentation of his employment.¹ Additionally, although he was required to test negative for illegal substances, he was generally noncompliant with his scheduled testing, tested positive for marijuana use on several occasions, and was arrested in February 2010 for, and ultimately convicted of, attempted possession of more than four pounds of marijuana for sale. Last, he did not complete a mental health intake at COPE and did not participate in substance abuse or domestic violence counseling, all of which were required by his case plan.

¶11 Jesse maintains these failures were due to his difficulties in obtaining AHCCCS² coverage, but his case manager testified that he had not told her “what [wa]s missing, what documents or anything else that he [was] missing that would make him ineligible.” And, she testified that obtaining coverage was ultimately Jesse’s responsibility. Furthermore, she suggested that AHCCCS coverage would not have been necessary to enroll in domestic violence counseling.

¶12 Although he maintains he had “undisputed, legitimate, reasons for not completing” some of the tasks, mainly his problems in obtaining AHCCCS coverage, the juvenile court could have given more weight to Jesse’s case manager’s testimony, which suggested he had simply failed to complete the required work to obtain coverage. Thus, although he contends otherwise, Jesse essentially asks us to reweigh the evidence on appeal, which we will not do. *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (juvenile court “in the best position to weigh the

¹Jesse did provide the case manager with a letter from someone he purportedly worked for, but she testified she was uncertain whether he still worked for that person and he had not provided any paystubs or other documentation of his employment.

²This is the acronym for Arizona Health Care Cost Containment System, Arizona’s indigent health care system.

evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts”). In sum, although we acknowledge that Jesse’s participation in his case plan was more than “trivial or de minimus,” *In re Maricopa Juv. Action No. JS-501568*, 177 Ariz. 571, 576 n.1, 869 P.2d 1224, 1229 n.1 (App. 1994), we cannot agree with his contention that no “reasonable person would have reached the same conclusion that the trial court did.”³

¶13 Courtney also contends her “actions were far from a demonstration of substantially neglecting or wilfully refusing to engage in services.” In support of her argument, Courtney first maintains the juvenile court erroneously “found that [she] was not in compliance with her COPE case plan” for mental health treatment. But the court made no such finding. As further evidence of her efforts to remedy the causes of Joey’s out-of-home placement, Courtney also points to her successful completion of parenting instruction and testimony at the hearing suggesting she was motivated to find housing and was in the process of doing so.

¶14 Like Jesse, Courtney disregards evidence of her noncompliance with her case plan. She failed to complete substance abuse counseling, failed to complete domestic violence counseling,⁴ and was noncompliant with her substance abuse testing—

³Jesse also seems to suggest he should be excused from failing to comply with his case plan because the results of paternity testing were not disclosed until after the severance hearing. But, CPS’s December 2009 report to the juvenile court for the initial dependency hearing stated that Jesse had informed them he would sign an affidavit of paternity. In any event, Jesse has not cited any authority to support his implicit assertion that a putative father’s parental rights cannot be terminated under § 8-533(B).

⁴Courtney’s COPE case manager testified Courtney had been “getting involved in domestic violence classes, but that hasn’t been in the last month or two.” Her CPS case manager testified that, although Courtney had been in a domestic violence shelter at one

appearing for only one test since February 2010 and failing to submit to a court-ordered test after the first day of the severance hearing. And although she claimed to work at a pharmacy and clean houses, she did not provide any documentation of employment.

¶15 Additionally, Courtney’s CPS case manager had not seen her residence, and Courtney essentially admitted having avoided a visit from the case manager at one former residence. She also failed to participate in drug court, applying too late to enroll. Furthermore, Courtney failed to appear at a number of visits with Joey and, at the time of the hearing, had not visited him since May 2010. Additionally, Courtney was arrested in May 2010 as a result of a domestic violence incident with Jesse at a hotel in which she had been placed, despite a requirement that she not tell Jesse where she was staying. In sum, based on Courtney’s actions and failure to act, the juvenile court reasonably could conclude she had “substantially neglected or wilfully refused to remedy the circumstances” causing Joey to be in out-of-home care. § 8-533(B)(8); *see also Denise R.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d at 1265-66.

¶16 Courtney further alleges ADES failed to “make diligent efforts to provide reunification services” because her case manager had not ordered a new psychological evaluation “to obtain a correct diagnosis.” But her case manager at COPE testified she had received a mental health diagnosis in January 2009 from a nurse practitioner who also prescribed her medications. She was diagnosed with post-traumatic stress disorder (PTSD), attention deficit hyperactivity disorder (ADHD), and a personality disorder. Her COPE therapist initially testified she had only been diagnosed with PTSD, but later acknowledged she also suffered from borderline personality disorder and ADHD.

point, Courtney had not reported to the case manager whether she had obtained domestic violence counseling while there.

¶17 The only inconsistency in Courtney’s mental health diagnoses evident in the record apparently arose from her self-report that she suffered from borderline schizophrenia and multiple personality disorder.⁵ Her therapist explained that this report could have arisen from confusion about terminology and the fact that Courtney had suffered dissociative episodes. In any event, as Courtney herself points out, her CPS case manager “didn’t have any concerns that [she] wasn’t engaging in services at COPE” to treat her mental disorders. Nothing in the record before us, therefore, suggests, as Courtney alleges, that CPS “allowed [her] to suffer from untreated and undiagnosed, albeit evident, mental health issues during this case.”

¶18 Courtney also argues ADES failed to provide appropriate services because her case manager had not sufficiently coordinated with her caregivers at COPE. There is sufficient evidence to support the juvenile court’s finding, however, that “[a]lthough the case manager could have done more to coordinate [Courtney’s] services with COPE, her actions do not constitute a failure on the part of the agency to make reasonable efforts to reunify the family.” Courtney’s case manager conceded at the hearing that she had not spoken with Courtney’s COPE therapist, reviewed her COPE evaluations, or received monthly or quarterly reports from COPE. She had, however, spoken by telephone and met in person with Courtney’s case manager at COPE, as well as her supervisor, and testified she had believed Courtney was in compliance with her mental health case plan there.

⁵Although Courtney’s CPS case manager testified she had been told by the CPS investigator that this diagnosis came from COPE, a review of the report to which she referred in her testimony suggests the diagnosis was reported to the investigator by Courtney.

¶19 Based on the record before us, viewing the evidence in the light most favorable to sustaining the juvenile court’s ruling, we conclude reasonable evidence supported the court’s conclusion that severance was appropriate. *See Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303; *see also* § 8-533(B)(8); *Denise R.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d at 1265-66. Accordingly, we affirm the order terminating Courtney and Jesse’s parental rights to Joey.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge